

May 14, 2013

Marivic JoAnn Fields
1156 Paseo Primavera
Chula Vista, CA 91910

Re: Your Request for Advice
Our File No. A-13-055

Dear Ms. Fields:

This letter responds to your request for advice regarding the honoraria provisions of the Political Reform Act (the “Act”).¹ This letter is based on the facts presented; the Fair Political Practices Commission (the “Commission”) does not act as the finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Additionally, nothing in this letter should be construed to evaluate any conduct which may have already taken place.

QUESTION

Do the positions you hold as detailed below qualify as speeches given or articles published under the Act’s honorarium provisions?

CONCLUSION

As long as you meet the record keeping requirements provided in Regulation 18932.1, the payments are reportable income and not prohibited honoraria.

FACTS

You are a Field Representative for the Office of California State Assembly Member Shirley N. Weber – 79th District. You have worked part-time for Assembly Member Weber’s office since January 2013. Field Representatives are a designated position, and you therefore file a Form 700 (statement of economic interests), with full disclosure.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

You also work for the following entities:

- Reality Changers (RC), a non-profit organization that provides after-school tutoring for high school students. You are the Associate Director for Media and Community Outreach. Your duties include making presentations for community leaders, organizations, and potential sponsors of RC. You also maintain RC's social media networks, prepare media advisories and releases, and send out an e-newsletter. You may also contribute content for the newsletter.
- San Diego Voice & Viewpoint, a local newspaper, for which you are a staff writer and photo journalist covering community festivals, youth, women and faith-based events. To maintain your journalistic integrity, you have requested not to cover any events that include Assembly Member Shirley Weber.
- Imagine Media Group, LLC, a group that specializes in web design, marketing campaigns and event planning. You assist non-profit organizations that generally cannot afford a full-time public relations/marketing staff person and assist in navigating government resources, such as grant workshops, letters of support, meet and greets, and other resources.

You seek advice regarding whether any of your activities in these positions conflict with the Act's honoraria prohibitions.

ANALYSIS

Section 89502(c) provides that "no designated employee of a state or local government agency shall accept an honorarium from any source if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests." As a designated employee with full disclosure under your agency's conflict of interest code, you are required to disclose sources of income for all sources. You are generally prohibited under Section 89502(c) from accepting honoraria from persons for which you have to report receipt of income and gifts on your statement of economic interests.

Section 89501 defines the term "honorarium," in pertinent part, as follows:

"(a) For purposes of this chapter, 'honorarium' means, except as provided in subdivision (b), any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering.

"(b) The term 'honorarium' does not include:

"(1) Earned income for personal services which are customarily provided in connection with the practice of a bona fide business, trade, or

profession, such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting, unless the sole or predominant activity of the business, trade, or profession is making speeches. The Commission shall adopt regulations to implement this subdivision.”

Interpreting Section 89501(b)(1), Regulation 18932 provides:

“(a) ‘Honorarium’ does not include income earned from personal services if:

“(1) The services are provided in connection with an individual’s business or the individual’s practice of or employment in a bona fide business, trade, or profession, such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting, pursuant to [Regulations 18932.1 through 18932.3]; and

“(2) The services are customarily provided in connection with the business, trade, or profession.”

Additionally, Regulation 18931.2 states:

“(a) For purposes of Government Code Sections 89501 through 89506, an ‘article published’ means a nonfictional written work:

(1) That is produced in connection with any activity other than the practice of a bona fide business, trade, or profession; and

(2) That is published in a periodical, journal, newspaper, newsletter, magazine, pamphlet, or similar publication.”

You will be writing non-fiction articles for a local newspaper and providing marketing and organizational support for non-profit organizations. Regulation 18932.1 explains that for purposes of Sections 89501 through 89506, a business is presumed to be “bona fide” if the owner of the business has maintained the following documents for the two calendar years immediately preceding the year in which consideration for any payment was provided:

- Books and records of accounting consistent with the operation of a business; and
- Copies of tax returns filed in connection with the operation of the claimed business.

Regulation 18932.1 states the rule for determining when an individual’s business or practice of, or employment in, a field is a “bona fide” business. Subdivision (b) thereof addresses a business that has been in existence for fewer than two years. It states as follows:

“(b) For purposes of Government Code Sections 89501 through 89506, a business that has been in existence for less than two calendar years is presumed to be “bona fide” if:

“(1) Its owner has maintained records of income and expenses, consistent with the operation of a business, from the date of inception of the claimed business; and,

“(2) Any three of the following are maintained:

“(A) Copies of tax returns filed in connection with the operation of the claimed business for one year;

“(B) Records of bank accounts or lines of credit in the name of the business;

“(C) Records of purchase, lease, or rental of equipment and supplies for use solely by the business;

“(D) Records of expenditures for rent, wages, business or professional insurance, or other similar, customary costs of doing business;

“(E) Records of efforts to market goods or services provided by the business; or

“(F) Documentation of expertise by the business operator in connection with the service.”

If the above factors are met in your positions and you are practicing a bona fide business, trade, or profession, the honorarium provisions do not apply to you within these job duties. In addition, your compensation is based on the jobs performed for these entities and you must report these amounts on your Form 700 as income. (*See* Section 82030.)

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Heather M. Rowan
Senior Counsel, Legal Division

HMR:jgl